IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1209 of 1999

For Approval and Signature:
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KARAMSHIBHAI MULJIBHAI SHAH - Applicant(s)

Versus

ARUNBHAI AMRUTLAL DOSHI & 1 - Opponent(s)

==========

Appearance :
MR MEHUL S SHAH for Petitioner No(s).: 1.
MR SURESH M SHAH for Petitioner No(s).: 1.

MR KM PATEL for Respondent No(s).: 1,2.
==========

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 19/07/2005

ORAL JUDGMENT

1.By filing instant petition under Section 115 of the Code of Civil Procedure, the petitioner seeks to challenge the order dated 9.7.1999 recorded below

application exh.68 in Special Civil Suit No. 117 of 1992 by the learned 2nd Joint Civil Judge (SD), Jamnagar, by which the application filed by the petitioner to implead respondent No.2 as Defendant No.2 in the said suit, came to be rejected.

2. The Petitioner/Plaintiff has filed Special Civil Suit No. 117 of 1992 against respondent No.1 seeking decree of specific performance of the agreement executed by Defendant No.1 which was signed by Defendant No.2 on behalf of Defendant No.1. According to the Petitioner he has forgotten to join respondent No.2 as Defendant bonafidely. Disputed agreement was executed by respondent No.2 on behalf of respondent No.1, therefore according to the petitioner he is an important party to the said proceedings, therefore required to be joined him as a party in the interest of justice.

3. Respondent No.2 objected the said application by filing written objection exh.69 wherein all the averments made in the application are denied and according to him the said application is filed by the petitioner to delay the proceedings and respondent No.2 is not a necessary party and therefore prayed to dismiss the application.

4. The learned trial Judge after considering the application exh.68 and the reply, written objection exh.69 and submissions advanced at the bar, rejected the application on the ground that no relief is sought against respondent No.2.

5. This Court has considered the submissions advanced by Mr. S.M.Shah, learned advocate of the petitioner and perused the impugned order as well as the averments made in the plaint and the written statement, copies whereof have been supplied by Mr. S.M.Shah, during the

course of his submission.

6. It is true that the petitioner has filed suit for the decree of specific performance of the agreement dated 29.12.1990 against respondent No.1. According to the petitioner respondent No.2 has signed the said agreement on behalf of respondent No.1. The decree is claimed against respondent No.1 only. The petitioner wanted to join him with a view to prove the signature of respondent No.2 who has signed on behalf of respondent No.1. Therefore, according to this Court, the petitioner can very well examine respondent No.2 as a witness to prove the signatures put by him.

7. In aforesaid view of the matter, according to this Court, there is no substance in the challenge made by the petitioner, therefore this petition deserves to be rejected.

8. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged.

9. However, it would be open for the petitioner to examine respondent No.2 as his witness or petitioner can also make a request to the Court to examine respondent No.2 as Court witness and if such a request is made, the learned trial Judge shall consider the same in order to do the complete justice between the parties.

(A.M.Kapadia,J)

Jayanti*